



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0786; FRL-9752-5]

Approval and Promulgation of Implementation Plans; Tennessee; Regional Haze State Implementation Plan; Best Available Retrofit Technology Requirements for Eastman Chemical Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of the Best Available Retrofit Technology (BART) requirements for the Eastman Chemical Company (Eastman) that were provided in a revision to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department Environment and Conservation (TDEC), on April 4, 2008, as later modified and supplemented on May 14, 2012, and May 25, 2012. EPA previously proposed action on the BART requirements for Eastman in association with action on Tennessee's April 4, 2008, regional haze SIP revision. On April 24, 2012, EPA took final action on all aspects of the April 4, 2008, SIP revision to address regional haze in the State's and other states' Class I areas except for the BART requirements for Eastman. The May 14, 2012, SIP revision (as clarified in a May 25, 2012, SIP revision) changed the compliance date for the Eastman BART determination included in Tennessee's April 4, 2008, SIP revision and provided a BART alternative determination option for Eastman. EPA is finalizing approval of the BART requirements for Eastman, as provided in Tennessee's April 4, 2008, May 14, 2012, and May 25,

2012, SIP revisions because these SIP revisions are consistent with the regional haze provisions of the Clean Air Act (CAA) and EPA's regulations.

EFFECTIVE DATE: This rule will be effective [insert 30 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0786. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Michele Notarianni can be reached at telephone number (404) 562-9031 and by electronic mail at notarianni.michele@epa.gov.

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I. What is the Background for this Final Action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity,

color, and visible distance that one can see. PM_{2.5} can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution." On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is "reasonably attributable" to a single source or small group of sources, i.e., "reasonably attributable visibility impairment." *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia,

and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On April 4, 2008, TDEC submitted a revision to Tennessee's SIP to address regional haze in the State's and other states' Class I areas. On June 9, 2011, EPA published an action proposing a limited approval and a limited disapproval of Tennessee's April 4, 2008, SIP revision (including the BART determination for Eastman – hereafter referred to as the “original Eastman BART determination”) to address the first implementation period for regional haze. *See* 76 FR 33662. After publication of EPA's June 2011 proposed action on Tennessee's regional haze SIP revision, the State and Eastman entered into discussions regarding a BART alternative determination that would give Eastman the option to comply with the regional haze BART requirements by converting its B-253 Powerhouse to natural gas in lieu of continuing to use coal and retrofitting its facility pursuant to the BART determination for SO₂ emissions (hereafter referred to as the “Eastman BART alternative determination”).

On April 24, 2012, EPA took final action on Tennessee's April 4, 2008, regional haze SIP revision, with the exception of the original Eastman BART determination. *See* 77 FR 24392. As noted in that action, EPA took no action on the original Eastman BART determination provided in the April 4, 2008, SIP revision at that time since EPA expected Tennessee to submit a supplemental SIP addressing an Eastman BART alternative determination. EPA's proposed action for the original Eastman BART determination remained in place after EPA's April 24, 2012, action on the remainder of Tennessee's regional haze SIP revision. On May 14, 2012, TDEC submitted a modification and supplement to its April 2008 Tennessee regional haze plan to address BART requirements for Eastman. On May 25, 2012, Tennessee modified the permit

to clarify that Eastman would fully implement BART or notify TDEC and EP of the selection of the Eastman BART alternative determination no later than April 30, 2017.

In summary, Tennessee's May 14, 2012, SIP revision: (1) modifies the final compliance date to April 30, 2017, for the original Eastman BART determination; and (2) establishes a BART alternative determination option for Eastman to convert its B-253 Powerhouse (Boilers 25-29) to burn natural gas. The May 14, 2012, SIP revision and Eastman's CAA title V operating permit stipulate that if Eastman elects to implement the Eastman BART alternative determination instead of the original Eastman BART determination, Eastman must begin construction on the Eastman BART alternative prior to April 30, 2017, and complete construction no later than the earlier of: December 31, 2018; the end of the period of the first long-term strategy for regional haze as determined by EPA; or the compliance deadline for the one-hour SO₂ national ambient air quality standard (NAAQS). Tennessee's May 14, 2012, SIP revision (as clarified in a May 25, 2012, SIP revision) also stipulates that if Eastman elects to implement the original Eastman BART determination instead of the Eastman BART alternative determination, it must comply with the BART requirements by April 30, 2017.

The Tennessee Air Pollution Control Board approved this SIP revision and associated operating permit as Board Order 12-008 on May 9, 2012. TDEC submitted the modifications to the compliance date for the original Eastman BART determination; the additional Eastman BART alternative determination; and the Board Order as a SIP revision on May 14, 2012, and submitted a clarifying SIP revision on May 25, 2012.

On August 27, 2012 (77 FR 51739), EPA proposed to approve the modifications to the compliance date for the original Eastman BART determination and the Eastman BART alternative determination option, as provided in Tennessee's May 14, 2012, SIP revision. In that action, EPA preliminarily determined that implementation of the BART alternative option would achieve greater reasonable progress than would be achieved through the installation and operation of BART at Eastman and that the BART alternative option met the requirements of 40 CFR 51.308(e)(2). As mentioned earlier, EPA previously proposed approval of Tennessee's original Eastman BART determination as provided in the State's April 4, 2008, SIP revision. EPA proposed approval of Tennessee's SIP revision implementing BART requirements for Eastman (as submitted by the State in an April 4, 2008, SIP revision, and later modified and supplemented in a May 14, 2012, SIP revision) because EPA preliminarily determined that these requirements are consistent with the CAA and EPA's regulations on regional haze BART determinations and BART alternative determinations. The May 25, 2012, SIP revision simply clarified an established requirement and does not substantively modify the proposed action.

II. What is the Update to the Response to Comments Received on EPA's June 9, 2011, Proposal Related to Eastman?

EPA received six sets of comments on the June 9, 2011, rulemaking proposing a limited approval and limited disapproval of Tennessee's April 4, 2008, regional haze SIP revision. Specifically, the comments were received from the American Coalition for Clean Coal Electricity, Eastman, TDEC, the National Park Service, the Tennessee Valley Authority, and the

Utility Air Regulatory Group (UARG).¹ Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as “the Commenter”) are provided in EPA’s docket for the April 24, 2012, final rulemaking, which is the same docket for today’s final action.

EPA addressed these comments in the April 24, 2012, final rulemaking, and is only providing an update to the comments related to the original Eastman BART determination since EPA is now taking final action on this component of Tennessee’s April 4, 2008, regional haze SIP revision. Please refer to EPA’s April 24, 2012, final rulemaking on Tennessee’s regional haze SIP revision for EPA’s further response to comments on Tennessee’s regional haze SIP. *See* 77 FR 24392. A summary of the comments related to action on the original Eastman BART determination and EPA’s responses are provided below.

Comment 1: The Commenter requests that EPA delay final action on the June 9, 2011, proposed rulemaking related to Tennessee’s regional haze SIP revision so that the BART requirements are harmonized with other pending federal air quality regulatory actions that affect Eastman’s Tennessee facility (e.g., 1-hour SO₂ NAAQS, the maximum achievable control technology (MACT) rule for industrial boilers (Industrial Boiler MACT), and the Transport Rule). The Commenter asserts that this will provide Eastman with an opportunity to meet all of the requirements of these numerous programs at one time and will allow Eastman to comply with

¹ EPA notes that in the April 24, 2012, final rulemaking (77 FR 24392), EPA did not specifically mention UARG as one of the Commenters for which EPA was providing response to comments. UARG’s comments were one of the six sets of comments considered and responded to in the April 24, 2012, final rulemaking. These comments were included in the docket for the April 24, 2012, final rulemaking.

all pending requirements in an efficient and cost-effective manner.

Response 1: Under section 110(k)(2) of the CAA, EPA is required to act within specified timeframes to approve or disapprove SIP revisions. As mentioned above, Tennessee submitted its regional haze SIP revision for EPA review on April 4, 2008, and EPA is already past-due on its action per the statutory deadlines. There is no authority in the CAA for EPA to further delay action for the reasons provided by the Commenter, and EPA committed to take final action by November 15, 2012, on the BART requirements for Eastman.

Comment 2: The Commenter indicates that it is fundamentally inequitable to set the BART compliance deadline earlier for non-electric generating units (EGUs), in reference to the Eastman facility, than for EGUs and to require non-EGUs to make necessary investments earlier than EGUs. Further, the Commenter asserts that this step is not required to ensure reasonable progress in visibility improvement in Class I areas.

Response 2: EPA previously responded to this comment in the April 24, 2012, final rulemaking on the remainder to the Tennessee regional haze SIP. *See* 77 FR 24392. Today, EPA is responding to this comment as it relates specifically to the BART determination for Eastman. EPA reiterates that it is not clear what compliance dates the Commenter is referring to. Pursuant to 40 CFR 51.308(e), Tennessee submitted a regional haze SIP containing BART determinations for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area and schedules for compliance with BART for each of

these sources. Tennessee's April 4, 2008, regional haze SIP also contains a requirement, based on the provisions of 40 CFR 51.308(e)(1)(iv), that each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than five years after approval of the SIP revision. EPA finalized action on the State's April 4, 2008, SIP submission (excluding the BART determination for Eastman) on April 24, 2012, and the State's May 14, 2012, SIP revision, as clarified through a May 25, 2012, SIP revision, requires Eastman to comply with BART by April 30, 2017, should it elect not to implement the BART alternative option. Therefore, the latest BART compliance date under the Tennessee regional haze SIP for the State's subject-to-BART sources (including Eastman) is in 2017. These timelines are consistent with CAA requirements for implementing the regional haze program.

In comparison, the Utility Boiler MACT and the Industrial Boiler MACT require compliance with their respective standards by 2015 as does the Clean Air Interstate Rule (CAIR),² a rule that applies only to EGUs. It is therefore possible that an EGU relying on CAIR to satisfy BART will be required to implement controls that would satisfy BART requirements (via CAIR) before a non-EGU in Tennessee.

² Although remanded to EPA, CAIR continues to apply in the interim until EPA adopts a replacement.

III. What is the Response to Comments Received on EPA’s August 27, 2012, Proposal Related to Eastman?

EPA received one set of comments on the August 27, 2012, proposed rulemaking to approve Tennessee’s May 14, 2012, SIP revision to: (1) modify the compliance date for the original Eastman BART determination; and (2) establish a BART alternative determination option for Eastman to convert its B-253 Powerhouse (Boilers 25-29) to burn natural gas. Specifically, the comments were received from Eastman (hereinafter referred to as “the Commenter”) and are provided in the docket for today’s final action.

In section II of this action, EPA updated its response to comments from the April 24, 2012, final rulemaking as it relates to the original Eastman BART determination. In addition, EPA is addressing comments received in response to the Agency’s August 27, 2012, proposed rulemaking to approve Tennessee’s May 14, 2012, SIP revision to: (1) modify the compliance date for the original Eastman BART determination; and (2) provide the option for an Eastman BART alternative determination. Additional detail for EPA’s rationale for the proposed approval of Tennessee’s May 14, 2012, SIP revision can be found in EPA’s August 27, 2012, proposed rulemaking. *See* 77 FR 51739. A summary of the comments related to EPA’s August 27, 2012, proposal, and EPA’s responses to those comments are provided below.

Comment 3: The Commenter asks EPA to clarify that December 31, 2018, is the end of the first long-term strategy period to avoid any confusion regarding the completion date for the Eastman BART alternative. Tennessee’s May 14, 2012, SIP revision and Eastman’s CAA title V operating permit stipulate that if Eastman elects to implement the Eastman BART alternative

determination instead of the original Eastman BART determination, Eastman must begin construction on the Eastman BART alternative prior to April 30, 2017, and complete construction no later than the earlier of: December 31, 2018; the end of the period of the first long-term strategy for regional haze as determined by EPA; or the compliance deadline for the one-hour SO₂ NAAQS.

Response 3: As stated in EPA’s August 27, 2012, proposed rulemaking notice, “[a] December 31, 2018, date for the end of the period of the first long term strategy is consistent with the requirement to evaluate visibility over calendar year periods and the requirement for each state to submit an initial regional haze SIP that covers the period from submittal through 2018.” *See* 77 FR 51741. Therefore, Eastman must complete construction of the BART alternative by December 31, 2018, or the compliance deadline for the one-hour SO₂ NAAQS, whichever is earlier, should it elect to implement the BART alternative.

IV. Final Action

EPA is finalizing approval of the BART requirements for Eastman that were submitted by the State of Tennessee as a part of a revision to the Tennessee SIP on April 4, 2008, and as later modified and supplemented in a SIP revision provided on May 14, 2012, and May 25, 2012. Specifically, EPA is finalizing approval of the original Eastman BART determination as provided in Tennessee’s April 4, 2008, SIP revision, with the modified compliance date provided

in Tennessee's May 14, 2012, SIP revision, and as clarified in a May 25, 2012, SIP revision. EPA is also finalizing approval of Tennessee's May 14, 2012, and May 25, 2012, SIP revisions to provide an option for Tennessee to implement a BART alternative determination for Eastman in lieu of the original Eastman BART determination that was provided in Tennessee's April 4, 2008, SIP revision (with the modified compliance date provided in Tennessee's May 14, 2012, SIP revision). EPA has concluded that implementation of the BART alternative option would achieve greater reasonable progress than would be achieved through the installation and operation of BART at Eastman and that the BART alternative option meets the requirements of 40 CFR 51.308(e)(2). These actions are consistent with the CAA and EPA's regulations on regional haze, BART determinations, and BART alternative determinations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or

preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 6, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart RR—Tennessee

2. Amend §52.2220 by:

- a. In paragraph (d) by adding two new entries for “Eastman Chemical Company” and “Eastman Chemical Company – Amendment #1” at the end of the table; and
- b. In paragraph (e) by adding a new entry for “Regional Haze Plan - Eastman Chemical Company BART determination” at the end of the table.

The added text reads as follows.

§52.2220 Identification of plan.

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(d) * * *

EPA-Approved Tennessee Source-Specific Requirements

Name of Source	Permit No.	State effective date	EPA approval date	Explanation
**	**	*	*	*
Eastman Chemical Company	BART Permit 066116H	May 9, 2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	BART determination

Eastman Chemical Company – Amendment #1	BART Permit 066116H, Amendment #1	May 22, 2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Clarifying amendment to BART Determination
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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
Regional Haze Plan - Eastman Chemical Company BART determination	Statewide	May 9, 2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication].	Applicable only to the Eastman Chemical BART determination

§ 52.2234 [Amended]

3. Amend §52.2234 by removing and reserving paragraph (b).

[FR Doc. 2012-27974 Filed 11/26/2012 at 8:45 am; Publication Date: 11/27/2012]